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ATTORNEY GENERAL SEEKS DISMISSAL OF NAWS SUIT

BISMARCK – Attorney General Wayne Stenehjem has filed a motion in a federal court in Washington, D.C., seeking dismissal of lawsuits filed by the Province of Manitoba and the State of Missouri to stop the Northwest Area Water Supply Project (NAWS).

NAWS is a collaborative project between North Dakota and the U.S. Bureau of Reclamation that will address water quality and water quantity issues in north central North Dakota. The project will pipe water from Lake Sakakawea to Minot and to a number of cities and rural areas north of Minot. About 80,000 residents will be served by the project when it is fully operational.

The Province of Manitoba sued in 2002 to stop the project and the State of Missouri filed suit earlier this year.

“Manitoba is concerned about invasive species,” stated Stenehjem. “About half of the pipeline from Lake Sakakawea to Minot is in the Hudson Bay Basin and Manitoba is worried that any leaks in that segment could result in transferring non-native biota to the Hudson Bay Basin.” Full treatment of the water will occur at Minot’s water treatment plant.

Prior to construction on NAWs the Bureau of Reclamation analyzed the project’s environmental consequences and in 2001 issued a formal Environmental Assessment. That analysis concluded that chemically treating the water with chloramine before it crossed the continental divide coupled with pipeline design safeguards would protect Manitoba’s interests. Manitoba, however, disagreed and filed suit against the Bureau.

Stenehjem stated: “To protect North Dakota interests, after Manitoba filed suit against the Bureau I immediately filed a motion with the court asking that North Dakota be allowed to intervene and participate as a full party. The Court granted our motion and we’ve been involved ever since.”

In 2005 the Court issued a ruling in which it found inadequacies in the Bureau’s environmental review, and ordered a more extensive review.

“After that ruling Manitoba tried to get construction completely shut down but we persuaded the Court not to do that,” Stenehjem stated. Construction on NAWs has continued throughout the litigation. Stenehjem added: “After the judge’s initial ruling we secured rulings in 2006 and 2008 that allowed construction to proceed.”

Last January the Bureau, in response to the Court’s request for additional environmental analysis, completed a full Environmental Impact Statement (EIS) on the project. The Bureau’s additional analysis resulted in adding new safeguards. The

project will now include ultraviolet disinfection along with chloramine to treat Lake Sakakawea water before it crosses the continental divide.

According to the EIS, this added level of treatment and other protective features—such as isolation vaults along the pipeline and sophisticated pipeline monitoring—significantly reduce any risk that the project might pose to Manitoba's environment.

"Manitoba disagrees and is now challenging the EIS," Stenehjem stated. "But," he added, "I'm confident that this additional treatment level for the water will put to rest whatever misgivings the judge may have with the project."

The State of Missouri's claim is that the project will remove water from the system, which will result in less water flowing down to that state. Like Manitoba, Missouri asserts that the Bureau's environmental analysis is inadequate. Stenehjem stated: "The amount of water that NAWS will remove from Lake Sakakawea is so small that it would be impossible to measure it at Lake Sakakawea or at any point below the lake. The project won't have any effect at all on our sister state down river."

Missouri sued not only the Bureau of Reclamation but expanded the suit by also naming the Corps of Engineers as a defendant. Missouri alleges that the Corps controls Lake Sakakawea and that it should have also prepared an environmental analysis of NAWS. North Dakota successfully intervened in Missouri's suit to defend against it.

Stenehjem stated: "Besides being an eleventh hour, woefully untimely suit, Missouri's arguments have little merit. This has always been a Bureau of Reclamation project and never a Corps project. NAWS has been expressly authorized by Congress more than once and Congress has not given the Corps any role in it." Stenehjem added: "Not even the Corps of Engineers believes that NAWS is a Corps project requiring that it conduct an environmental analysis."

On the day North Dakota filed its motion to dismiss the two lawsuits the Bureau of Reclamation and the Corps of Engineers filed similar motions. Manitoba and Missouri have until September 28 to respond to the motions.

Attorney General Stenehjem expects a ruling from the Court by late this year or early next year.

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